

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Wahluke Produce, Inc.,

NO. C 08-04428 JW

Plaintiff,

**ORDER VACATING ORDER TO SHOW
CAUSE HEARING**

v.

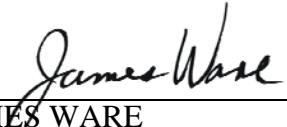
Coyuque Produce, et al.,

Defendants.

On May 4, 2009, Plaintiff is scheduled to appear for a hearing on an Order to Show Cause regarding Plaintiff's failure to timely serve Defendants. (See Docket Item No. 5.) Plaintiff filed this action on September 23, 2008. (See Docket Item No. 1.) As of April 3, 2009, no proof of service had been filed. Thus, the Court issued an Order to Show Cause why this case should not be dismissed for failure to timely serve Defendants. (See Docket Item No. 5.) On April 24, 2009, Plaintiff filed a Response to the Order to Show Cause, explaining that the failure to file proof of service of process on Defendants was due to the fact that another creditor of Defendants, also asserting a PACA claim, wished to join the lawsuit. (See Docket Item No. 9.) Plaintiff's counsel intended to file an Amended Complaint and subsequent proofs of service. (Id.) The other creditor did not join the suit, which caused Plaintiff's counsel to neglect to file the original proofs of service. (Id.) Plaintiff's counsel subsequently filed the proofs of service from the initial Complaint on April 24, 2009, showing that Defendants had been served on October 29, 2008. (See Docket Item Nos. 6-7.)

1 Upon review of the Plaintiff's Response to the Order to Show Cause and the proofs of
2 service submitted by Plaintiff, the Court finds that Defendants have been served. Accordingly, the
3 Court VACATES its Order to Show Cause and the May 4, 2009 hearing is no longer necessary.

4
5 Dated: May 1, 2009



JAMES WARE
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Marion I Quesenbery marion@rjlaw.com
3 Randal Jason Read jason@rjlaw.com

4 **Dated: May 1, 2009**

Richard W. Wieking, Clerk

5
6 **By: /s/ JW Chambers**

Elizabeth Garcia
Courtroom Deputy

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28